Supreme Court, U.S.
FILED
MAR 27 2000
CLERK

(2)

No. 99-1132

In The
Supreme Court of the United States

PEOPLE OF THE STATE OF ILLINOIS

Petitioner,

v.

CHARLES McARTHUR,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

DEANNE F. JONES
Counsel of Record
JEFF JUSTICE
515 Millikin Court
Decatur, Illinois 62523
Tele: (217) 422-9800

Counsel for Respondent

13pp

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ..... **i, ii, iii**

REASONS FOR DENYING THE WRIT **1**

CONCLUSION **9**

TABLE OF AUTHORITIES

United States Supreme Court Cases: ***Page(s)***

Mincey v. Arizona,
437 U.S. 385, 98 S. Ct. 2408,
57 L.Ed.2d 290 (1978) 8

Payton v. New York,
445 U.S. 573, 100 S. Ct. 1371,
63 L.Ed 2d, 639, (1980) 3

Segura v. United States,
468 U.S. 796, 104 S.Ct. 3380,
82 L.Ed.2d 599 (1984) 1, 2, 3, 4, 5, 8

Steagald v. United States,
451 U.S. 204, 221, 101 S. Ct. 1642,
1652, 68 L.Ed.2d 38, 51 (1981) 6

Terry v. Ohio,
392 U.S. 1, 88 S.Ct. 1868,
20 L.Ed.2d 889 (1968) 1, 2

United States v. Santana,
427 U.S. 38, 42-43, 96 S. Ct. 2406,
2409-10, 49 L.Ed.2d 300, 305 (1976); 6

Other Cases:

People v. Casazza
144 Ill. 2d 414, 581 N.E.2d 651 (1991) 5, 6

People v. Dale,
301 Ill. App. 3d 593, 703 N.E.2d
927 (4th Dist. 1998) 6

People v. Foskey
136 Ill. 2d 66, 75, 554 N.E.2d
192, 197 (1990) 7

People v. Jones
274 N.W.2d 273, 275-76 (Iowa 1979), *cert. denied*,
446 U.S. 907, 100 S. Ct. 1833,
64 L.Ed.2d 259 (1980) 7

People v. McArthur,
304 Ill. App. 3d 395, 713 N.E.2d 93
(4th Dist. 1999) 1, 2, 3, 4, 5, 6, 7, 8

People v. Wahlen,
111 Ill. App. 3d 194, 443 N.E.2d
728 (4th Dist. 1992) 6

People v. Yates,
98 Ill. 2d 502 (1983) 6

United States v. Segura,
663 F.2d 411 (1981); *3*

United States v. Acevedo,
627 F.2d 68, 70 (7th Cir.), *cert. denied*,
449 U.S. 1021, 101 S. Ct. 587, 66
L.Ed.2d 482 (1980) 7

Additional Authority:

720 ILCS 600/3.5 (West 1998) 7

REASONS FOR DENYING THE WRIT

The decision by the Illinois Appellate Court in *People v. McArthur*, 304 Ill. App. 3d 395, 713 N.E.2d 93 (4th Dist. 1999) does not merit review by this Court. Despite the State's assertion, the *McArthur* court did not decide that police are prohibited from securing a residence from the outside and barring entry into that residence while a search warrant is being obtained contrary to this Court's decision in *Segura v. United States*, 468 U.S. 796, 104 S. Ct. 3380, 82 L.Ed.2d 599 (1984). Rather, the crux of the *McArthur* decision was that the police illegally seized Mr. McArthur's residence by constructively evicting him, and conducted an illegal search by refusing his requests to reenter his home without a police officer's immediate presence. *McArthur*, 304 Ill. App. 3d at 402, 713 N.E.2d at 98. This decision was entirely consistent with the balancing test long established by this Court in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968) and its progeny and in keeping with this Court's reasoning in *Segura*.

Mr. McArthur stepped outside of his residence to refuse the police officer's request to search his home and from that point was barred from reentering without being accompanied by a police officer until another officer returned

with a search warrant. (R. 7-8, 12, 17-19). The police refused to let Mr. McArthur's mother enter his home without a police officer present. (R. 7-8). Anytime Mr. McArthur went into his home, a police officer stepped inside with him. (R. 8). These are the facts that the Illinois Appellate Court found compelling and distinguishable from *Segura*.

The criteria that this Court generally applies in granting a petition for certiorari are not present in the *McArthur* case. The *McArthur* decision is not an opinion from the highest court in the State of Illinois in conflict with the decision of the courts of last resort in other states, or with precedent established by the federal court of appeals. Further, the *McArthur* opinion does not conflict with applicable decisions of this Court, nor did it decide an important question that should be settled by this Court. Rather, the *McArthur* decision appropriately applied the balancing test long established by this Court in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968) and its progeny, and correctly determined that the police's conduct under these circumstances was unreasonable. As this Court has observed, in terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm

line at the entrance to the home. *Payton v. New York*, 445 U.S. 573, 590, 100 S. Ct. 1371, 1382, 63 L.Ed 2d 639, 653 (1980).

Without ever discussing the facts of *Segura*, the State contends that the *McArthur* court wrongly interpreted *Segura*. In *Segura*, the police arrested the petitioner in the lobby of his apartment building. They accompanied Segura to his apartment where they entered finding four others, including another individual for whom the police had an arrest warrant. The officers conducted a limited security check of the apartment to ensure that no one who was there posed a threat to their safety, or could destroy evidence. While performing this check, the officers observed drug paraphernalia in plain view. Two officers remained in Segura's apartment for 19 hours until a search warrant was issued while Segura and the others were taken into custody at police headquarters. The search yielded drugs, ammunition, cash and records of narcotics transactions. The district court granted the petitioners motion to suppress; however, that decision was reversed by the Second Circuit Court of Appeals, *United States v. Segura*, 663 F.2d 411 (1981). The petitioners were subsequently convicted of various drug

offenses, the Court of Appeals affirmed, and this Court granted certiorari. This Court determined that securing the premises from within while awaiting a search warrant, and while the owners were in police custody, was not unreasonable under the totality of the circumstances. *Segura*, 468 U.S. at 798, 104 S. Ct. at 3386, 82 L.Ed.2d at 604. The *Segura* decision did not determine whether a seizure of the premises occurred because it was not necessary to the Court's opinion. Rather, this Court said under the totality of the circumstances, any seizure that might have occurred was reasonable. *Segura*, at 806, 104 S. Ct. at 3386, 82 L.Ed.2d at 609. The *Segura* Court further reaffirmed precedent that an entry into the home in the absence of exigent circumstances is illegal. *Segura*, at 811-12, 104 S. Ct. at 3388, 82 L.Ed.2d at 613.

This is not a case, as the State suggests, where the police merely secured the residence from the outside. In *McArthur*, the police not only prohibited Mr. McArthur from reentering his home when he stepped outside to talk to them, but also admittedly entered Mr. McArthur's residence despite his telling them that they could not come into his home without a warrant. The Illinois Appellate Court correctly distinguished

Segura and concluded that the police had no authority to secure McArthur's home from the inside when he was not under arrest, or to prevent his reentry unless accompanied by a police officer given that the police were told that they could not enter. Mr. McArthur's case did not present circumstances like *Segura* where the officers entered Segura's apartment following his valid arrest and sealed the premises while its occupants were in police custody. Rather, the officer in McArthur's case had no authority to enter his home and did so despite being denied permission to search.

In reaching its conclusion, the Illinois Appellate Court relied on precedent from within the State. At the root of the Illinois cases discussed by the *McArthur* court was the Illinois Supreme Court's decision in *People v. Casazza*, 144 Ill. 2d 414, 581 N.E.2d 651 (1991). The *Casazza* court held that the police had no authority to order persons off a yacht while they waited for a search warrant. The State argued that *Segura* held that the securing of a dwelling when probable cause exists is not unreasonable when done to prevent the destruction of evidence. The *Casazza* court rejected this argument noting that the State relied on section IV of *Segura*, which was not binding precedent due to the fact that only

one justice joined in this section of the opinion. *Casazza*, 144 Ill. 2d at 419, 581 N.E.2d at 654. The *McArthur* court also relied on numerous decisions of the Illinois Appellate Court holding that the police do not have the absolute authority to seize and seal residences while waiting for search warrants. See *People v. Dale*, 301 Ill. App. 3d 593, 703 N.E.2d 927 (4th Dist. 1998); *People v. Wahlen*, 111 Ill. App. 3d 194, 443 N.E.2d 728 (4th Dist. 1992).

Furthermore, the Illinois Appellate Court found that no exigent circumstances existed for the officer's warrantless entry into Mr. McArthur's home. *McArthur*, 304 Ill. App. 3d at 403, 713 N.E.2d at 98. Whether exigent circumstances exist is evaluated on a case-by-case basis. *People v. Yates*, 98 Ill. 2d 502 (1983) (citing *Steagald v. United States*, 451 U.S. 204, 221, 101 S. Ct. 1642, 1652, 68 L.Ed.2d 38, 51 (1981) and *United States v. Santana*, 427 U.S. 38, 42-43, 96 S. Ct. 2406, 2409-10, 49 L.Ed.2d 300, 305 (1976)). Among the factors that are considered in judging the exigency of a particular situation are whether: (1) a grave offense is involved, particularly a crime of violence; (2) the suspect is reasonably believed to be armed; (3) there exists a clear showing of probable cause; (4) there is strong reason to

believe that the suspect is in the premises; (5) there is a likelihood the suspect will escape if not swiftly apprehended; and (6) the police entry, though nonconsensual, is made peaceably. *People v. Foskey*, 136 Ill. 2d 66, 75, 554 N.E.2d 192, 197 (1990); see also *People v. Jones*, 274 N.W.2d 273, 275-76 (Iowa 1979), *cert. denied*, 446 U.S. 907, 100 S. Ct. 1833, 64 L.Ed.2d 259 (1980); *United States v. Acevedo*, 627 F.2d 68, 70 (7th Cir.), *cert. denied*, 449 U.S. 1021, 101 S. Ct. 587, 66 L.Ed.2d 482 (1980).

Here, the Illinois Appellate Court properly found that no exigent circumstances existed for the officer's entry into Mr. McArthur's home. The offense that Mr. McArthur was charged with, possession of small amount of cannabis, was a Class A misdemeanor. 720 ILCS 600/3.5 (West 1998). There were no facts indicating that Mr. McArthur was armed or that he would escape. Although probable cause existed and the police entry was made peaceably, the trial court certainly did not abuse its discretion in finding that the officers' conduct in Mr. McArthur's case was unreasonable and the Illinois Appellate Court correctly affirmed that decision.

The police essentially sealed Mr. McArthur's home and made a warrantless entry. The court correctly applied

the above precedents and affirmed the trial court's ruling. As this Court has held numerous times, whether a given search or seizure violates the Fourth Amendment depends on a balancing test to be applied by courts on a case-by-case basis. The trial court and Illinois Appellate Court applied such a balancing test in *McArthur* and determined that the State's interests did not warrant police action preventing Mr. McArthur from reentering his home or stepping inside Mr. McArthur's residence whenever he did, without consent.

Contrary to the State's assertion, the *McArthur* decision does not render the securing of residences in order to obtain evidence virtually impossible to uphold, nor does it severely limit the holding in *Segura*. Rather, the *McArthur* court's well reasoned analysis reaffirms this Court's pronouncements that "the Fourth Amendment reflects the view of those who wrote the Bill of Rights that the privacy of a person's home and property may not be totally sacrificed in the name of maximum simplicity in enforcement of the criminal law." See *Mincey v. Arizona*, 437 U.S. 385, 393, 98 S. Ct. 2408, 2413, 57 L.Ed.2d 290, 300 (1978). The State must have a warrant to enter a private citizen's home

or exigent circumstances must exist for a warrantless entry. The Illinois Appellate Court correctly concluded that the trial court did not abuse its discretion in finding that neither one of those two circumstances existed in Mr. McArthur's case. Accordingly, this Court should deny the State's petition for a writ of certiorari.

CONCLUSION

For the reasons contained herein, the Respondent, Charles McArthur, respectfully requests that this Court deny the State's petition for a writ of certiorari.

Respectfully submitted,

DEANNE F. JONES
Counsel of Record
JEFF JUSTICE
515 Millikin Court
Decatur, Illinois 62523
Tele: (217) 422-9800

Counsel for Respondent